DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2011 session. The unannotated South Carolina Code, consisting only of Code text, numbering, and history may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at LPITS@scstatehouse.gov regarding any apparent errors or omissions in content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 37.

 OPTOMETRISTS

**SECTION 40‑37‑5.** Application of chapter; conflicts of law.

 Unless otherwise provided for in this chapter, Chapter 1 of Title 40 applies to optometrists regulated by the Department of Labor, Licensing and Regulation. If there is a conflict between this chapter and Article 1, Chapter 1 of Title 40, the provisions of this chapter control.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑10.** South Carolina Board of Examiners in Optometry; membership; terms; conduct of business by positive majority vote.

 (A) There is created the South Carolina Board of Examiners in Optometry, which consists of seven members. Five members must be licensed optometrists appointed by the Governor upon nomination by all licensed optometrists in this State through an election conducted by the board. The Governor may reject any or all of those nominated upon satisfactory showing of the unfitness of those rejected. If the Governor declines to appoint any of the nominees submitted, additional nominees must be submitted in the same manner as the initial nominees. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. Two members of the board must be members of the general public who do not derive their income or support from any optical or optical‑related business and who are not related to an optometrist or a person engaged in an optical‑related business. The members from the general public may be nominated by any individual, group, or association and must be appointed by the Governor in accordance with Chapter 1 of Title 40.

 (B) The members of the board serve terms of four years and until their successors are appointed and qualify. No person may serve more than two consecutive four‑year terms; however, a person appointed to fill an unexpired term may be reappointed for two additional four‑year terms. The Governor may remove a member of the board in accordance with Section 1‑3‑240. No member may be removed without first giving the member an opportunity to refute the charges filed against the member, who must be given a copy of the charges at the time they are filed.

 (C) Any business conducted by the board must be by a positive majority vote. For purposes of this subsection "positive majority vote" means a majority vote of the entire membership of the board, reduced by any vacancies existing at the time.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑20.** Definitions.

 As used in this chapter:

 (1) "Board" means the South Carolina Board of Examiners in Optometry;

 (2) "Contact lens" means any device placed in contact with the eye for the purpose of correcting vision, therapy, or cosmetic alteration;

 (3) "Direct supervision" means supervision provided by a licensed optometrist who must:

 (a) be present in the department or facility where the supervisee is performing services;

 (b) be immediately available to assist the supervisee in the services being performed; and

 (c) maintain continued involvement in appropriate aspects of each treatment;

 (4) "Optical supplies" include, but are not limited to, contact lenses, ophthalmic lenses, ophthalmic frames;

 (5) "Basic certified optometrist" means an optometrist without education or training in the use of pharmaceutical agents and licensed to practice optometry without the use of pharmaceutical agents;

 (6) "Diagnostic certified optometrist" means an optometrist educated and trained in the use of pharmaceutical agents for diagnostic purposes only and licensed to practice optometry in conjunction with the use of pharmaceutical agents for diagnostic purposes only;

 (7) "Therapeutic certified optometrist" means an optometrist educated and trained in the use of pharmacological agents for diagnostic and therapeutic purposes and licensed to practice optometry with the use of pharmacological agents for diagnostic and therapeutic purposes.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑30.** Licensing requirement; practice of optometry.

 (A) It is unlawful for a person to engage in the practice of optometry in this State without being licensed by the board, except as otherwise authorized by this chapter.

 (B) A person is deemed to be practicing optometry within the meaning of this chapter if the person:

 (1) displays a sign or in any way advertises as an optometrist;

 (2) employs any means for the measurement of the powers of vision or the adaptation of lenses for the aid of vision;

 (3) uses lenses in the testing of the eye in the sale of spectacles, eyeglasses, or lenses other than lenses actually sold;

 (4) examines the human eye by the employment of any subjective or objective physical means to ascertain the presence of defects or abnormal conditions for the purpose of relieving them by the use of lenses, prisms, or other physical or mechanical means;

 (5) practices orthoptics or prescribes contact lenses; or

 (6) utilizes pharmaceutical agents for diagnostic and/or therapeutic purposes in the practice of optometry in accordance with this chapter.

 (C) The possession of appliances for the examination of the eye, optical supplies, ophthalmic instruments, or optical equipment is prima facie evidence of practicing optometry and requires compliance with this chapter.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑40.** Powers and duties of board; seal.

 (A) The board shall:

 (1) determine the eligibility of applicants for examination and licensure as optometrists;

 (2) prescribe the subjects, character, and manner of licensing examinations;

 (3) adopt a code of professional ethics appropriate to the profession of optometry;

 (4) evaluate and set criteria for continuing education course hours and programs;

 (5) conduct hearings on alleged violations by licensees of this chapter or regulations promulgated under this chapter;

 (6) discipline persons licensed under this chapter; and

 (7) promulgate regulations in accordance with the South Carolina Administrative Procedures Act.

 (B) The board may adopt an official seal and may adopt bylaws governing its proceedings.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑50.** Administration of board; assessment, collection and adjustment of fees.

 (A) The board must be administered by the Department of Labor, Licensing and Regulation in accordance with Chapter 1 of Title 40. The department shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities.

 (B) Fees must be assessed, collected, and adjusted on behalf of the board by the Department of Labor, Licensing and Regulation in accordance with this chapter and Section 40‑1‑50(D).

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑80.** Investigation of complaints; administration of oaths; subpoena of documents.

 For the purpose of conducting an investigation under this chapter, the department shall subpoena witnesses, take evidence, and require the production of any documents or records that the board considers relevant to the inquiry. The department shall administer oaths and issue subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers, and records on behalf of the board or, upon request, on behalf of a party to a proceeding. Upon failure to obey a subpoena or to answer questions propounded by the board or its hearing officer or panel, the board may apply to an administrative law judge for an order requiring the person to comply. If a board member files a complaint, the board member must not participate in the capacity as a board member at the hearing of the complaint.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑90.** Investigation results presented to board; disciplinary action.

 The results of all investigations must be presented to the board. If from these results it appears that a violation has occurred or that a licensee has become unfit to practice optometry, the board, in accordance with the Administrative Procedures Act, may take disciplinary action. No disciplinary action may be taken unless the matter is presented to and voted upon by the board. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as may be necessary under this section.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑100.** Civil penalties and injunctive relief.

 In addition to initiating a criminal proceeding for a violation of this chapter, the board may seek civil penalties and injunctive relief in accordance with Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑110.** Grounds for discipline; suspension of license on finding of mental incompetence.

 (A) In addition to the grounds for disciplinary action provided in Chapter 1 of Title 40, the board may revoke, suspend, reprimand, or otherwise restrict or limit the license of an optometrist or reprimand or otherwise discipline a licensee when it is established to the satisfaction of the board that the licensee:

 (1) has been convicted of a felony or any crime involving moral turpitude; forfeiture of a bond or a plea of nolo contendere is considered a conviction;

 (2) has knowingly performed an act that in any way assists a person to practice optometry illegally;

 (3) has caused to be published or circulated, directly or indirectly, fraudulent, false, or misleading statements as to the skill or methods of practice of an optometrist;

 (4) has failed to provide and maintain reasonable sanitary facilities;

 (5) is guilty of obtaining fees or assisting in obtaining fees under deceptive, false, or fraudulent circumstances;

 (6) has violated a provision of this chapter or regulations promulgated under this chapter;

 (7) has been guilty of using third‑party solicitation that is untruthful, deceptive, or coercive to obtain patronage.

 (B) In addition to all other remedies and actions provided for in this chapter, the license of an optometrist adjudged mentally incompetent by a court of competent jurisdiction automatically must be suspended by the board until the optometrist is adjudged by a court of competent jurisdiction or in any other manner provided by law as being restored to mental competency.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑115.** Jurisdiction.

 The board has jurisdiction over the actions of licensees and former licensees as provided for in Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑120.** Basis for disciplinary action.

 The board may take disciplinary action against a person as provided for in this chapter or Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑150.** Voluntary surrender of license.

 A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑160.** Appeal.

 A person aggrieved by a final action of the board may seek review of the decision in accordance with Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑170.** Assessment of investigation and prosecution costs.

 A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑180.** Payment and collection of costs.

 All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑190.** Confidentiality.

 Investigations and proceedings conducted under the provisions of this chapter are confidential and all communications are privileged as provided for in Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑200.** Penalties for unlawful practice.

 (A) It is unlawful for a person to practice optometry in violation of this chapter, and a person committing such a violation, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both. Each violation constitutes a separate offense.

 (B) In addition to the penalty provided in this section, optical supplies involved in the unlicensed practice of optometry in violation of this chapter must be confiscated and delivered to the law enforcement agency with jurisdiction where the violation occurred, and these supplies are considered contraband material as provided for in law.

 (C) Penalties provided for in this chapter or in Article 1, Chapter 1 of Title 40 apply to a corporation, association, or person aiding and abetting in committing a violation.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑230.** Denial of license.

 As provided for in Chapter 1 of Title 40, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑235.** Denial of license on basis of prior criminal record.

 A license for optometry may be denied based on a person's prior criminal record as provided for in Chapter 1 of Title 40.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑240.** Licensure requirements; display, renewal, and reinstatement of license.

 (A) A person is qualified to receive authorization to practice as an optometrist if the person demonstrates to the satisfaction of the board that he or she:

 (1) has submitted a written application in the form prescribed by the board;

 (2) was graduated from an accredited school or college of optometry that required four years' attendance and that grants the degree of doctor of optometry, if the schools and courses are approved by the board;

 (3) has satisfactorily passed all required examinations recognized or conducted by the board including, but not limited to, the examination of the National Board of Examiners in Optometry;

 (4) demonstrates good moral character;

 (5) has paid all applicable fees specified by the board.

 (B) If an applicant satisfies all licensure requirements provided in this chapter, the board may issue an authorization to practice to the applicant. An authorization to practice is a personal privilege and not transferable, and the issuance of an authorization to practice is evidence that the person is entitled to all rights and privileges of a licensed optometrist while the authorization to practice remains current and unrestricted. However, the license is the property of the State and upon suspension or revocation immediately must be returned to the board.

 (C) A licensee must display his or her license in a prominent and conspicuous place in the licensee's primary place of practice. Duplicates certified by the board must be displayed in any secondary places of practice.

 (D)(1) Licenses issued under this chapter must be renewed every two years on or before a date approved by the board upon the payment of a renewal fee and providing documentation of a minimum of forty hours of continuing education courses or meetings.

 (2) Continuing education instruction must be on subjects relative to optometry, exclusive of office management or administration, at board‑approved and recognized educational seminars and courses or accredited institutions of learning. Four of the forty hours may be for courses directly related to mandated health care programs including, but not limited to, HIPAA, Medicare and Medicaid, and Ethics or Jurisprudence. Sixteen of the forty hours must be pharmacology or pathology related. Satisfactory proof of compliance with this requirement is a prerequisite for biennial license renewal.

 (E) Any licensee who allows his or her license to lapse by failing to renew the license in accordance with this section may be reinstated by the board upon satisfactory explanation by the licensee of failure to renew the license and upon payment of a reinstatement fee and the current renewal fee, as established by the board. If a license has lapsed for more than one year, the board may impose further educational requirements for reinstatement. If a license has lapsed for more than two years, the person must reapply for licensure. A person practicing as an optometrist in this State during the time that his or her license has lapsed, has engaged in unlicensed practice and is subject to penalties provided for in this chapter.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑245.** Licensure by endorsement; requirements.

 An optometrist currently licensed and practicing at the therapeutic level in another jurisdiction may obtain a license by endorsement as an optometrist in this State. An applicant for licensure by endorsement must have:

 (1) submitted a written application in the form prescribed by the board;

 (2) graduated from an accredited school or college of optometry that required four years' attendance and that grants the degree of doctor of optometry, if the schools and courses are approved by the board;

 (3) satisfactorily passed all required examinations recognized or conducted by the board including, but not limited to, the examination of the National Board of Examiners in Optometry;

 (4) presented to the board evidence that all optometry licenses possessed by the applicant are current and in good standing;

 (5) presented to the board proof that no professional licenses granted to the applicant in any other state have been suspended, revoked, or restricted for any reason except nonrenewal or for the failure to obtain the required continuing education; and

 (6) paid all applicable fees specified by the board.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑280.** Use of license by unlicensed person; delegation of tasks to supervised assistants.

 (A) It is unlawful for a licensee to permit his or her license to be used by any unlicensed person, and it is unlawful for an unlicensed person to practice or attempt to practice or conduct business under the rights and privileges conferred upon another licensed person.

 (B) Notwithstanding any other provision of law, an optometrist may delegate tasks to assistants working under his or her direct supervision. However, under no circumstances may an assistant be allowed to make a refraction for eyeglasses or prescribe contact lenses. Nothing in this section precludes an optometrist who is supervising an assistant from being absent from the practice for reasonable periods during the working day including, but not limited to, lunch or other customary, practice‑related absences. Nothing in this section may be construed to interfere with the operation of offices in accordance with Section 40‑37‑325.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑290.** Purchasing, prescribing, and administering pharmaceutical agents.

 Notwithstanding any other provision of law, an optometrist may purchase, possess, administer, supply, and prescribe pharmaceutical agents, including oral and topically applied medications other than Schedule I and II controlled substances as defined in Section 44‑53‑110, for diagnostic and therapeutic purposes in the practice of optometry, except that:

 (1) when prescribing oral and topically applied medications, an optometrist is limited to these oral pharmaceutical agents: antihistamines, antimicrobial, antiglaucoma, over‑the‑counter drugs, and analgesics for the treatment of ocular and ocular adnexal eye disease. An optometrist may only prescribe these medications for the treatment of ocular and ocular adnexal eye disease;

 (2) when prescribing medications for the treatment of ocular and ocular adnexal disease, documentation in the patient's chart and appropriate consultations and referrals must be in accordance with the standard of care provided for in Section 40‑37‑310(E);

 (3) when prescribing analgesics, the prescription must be limited to a seven‑day supply;

 (4) when prescribing topical steroids, if after twenty‑one days of treatment it is necessary to continue this medication, the optometrist shall communicate and collaborate with an ophthalmologist;

 (5) no medications may be given by injection or intravenously.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑300.** Establishing pharmacy or selling pharmaceutical agents; dispensing contact lenses.

 (A) An optometrist may not establish a pharmacy in an optometry office or sell pharmaceutical agents prescribed in treatment unless there is a licensed pharmacist on staff and present when these prescriptions are filled. However, nothing in this section or in any other provision of law prohibits a licensed optometrist from administering or supplying pharmaceutical agents to a patient, without charge for the pharmaceutical agents, to initiate appropriate treatment.

 (B) Notwithstanding subsection (A) or any other provision of law, an optometrist may purchase, possess, administer, sell, prescribe, or dispense contact lenses, contact lens solutions, and topically applied dyes.

 (C) For purposes of this chapter "supply" is limited to pharmaceutical agents given to a patient by an optometrist for the purpose of initiating treatment until the patient's prescription can be filled by a registered pharmacist.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑310.** Referrals for treatment of eye diseases; glaucoma treatment; eye surgery.

 (A) In the diagnosis and treatment of ocular and ocular adnexal eye disease, documentation in the patient's chart and appropriate consultations and referrals must be in keeping with the standards of care provided for in this section.

 (B) In the diagnosis or treatment of eye disease, an optometrist, using judgment and that degree of skill, care, knowledge, and attention ordinarily possessed and exercised by optometrists in good standing under like circumstances, shall refer a patient to an appropriate medical or osteopathic doctor including, but not limited to, corneal, glaucoma, or retinal ophthalmological specialists when additional evaluation or treatment is necessary. However, an optometrist may refer a patient to another optometrist when additional evaluation or treatment is necessary or to a medical or osteopathic doctor as provided for in this section, and an optometrist may refer a patient to another optometrist for the purpose of fitting or dispensing eye glasses, contact lenses, or low vision aids. The South Carolina Board of Examiners in Optometry shall promulgate regulations for the maintenance of records of referrals by optometrists in accordance with this section.

 (C) Notwithstanding subsection (B), in treating and managing glaucoma an optometrist must strive to achieve a stable range of intraocular pressures considered unlikely to cause further optic nerve damage in that patient. Once this range of pressures is selected based on conditions presented by the patient, the optometrist must enter this range in the patient's chart. If no measurable progress is achieved in realizing the selected range of pressures within sixty days of initiating treatment, the optometrist shall refer the patient to an ophthalmologist. However, when treating acute angle closure glaucoma, an optometrist immediately shall initiate treatment, after which, the optometrist shall make an appropriate referral to an ophthalmologist.

 (D) An optometrist is prohibited from performing surgery. For purposes of this section surgery includes, but is not limited to, an invasive procedure using instruments that require closure by suturing, clamping, or other similar devices or a procedure in which the presence or assistance of a nurse anesthetist or an anesthesiologist is required. An optometrist is also prohibited from performing laser surgery. However, nothing in this section or any other provision of law may be construed to prohibit an optometrist from removing superficial ocular and ocular adnexal foreign bodies; removal of other foreign bodies must be referred to an ophthalmologist.

 (E) An optometrist must be held to the same standard of care as persons licensed under Chapter 47, Title 40, Physicians, Surgeons, and Osteopaths, and shall maintain a minimum of one million dollars in malpractice insurance coverage.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑320.** Publicizing office hours; mobile units; promulgation of regulations pertaining to optometry offices.

 (A) An optometrist shall post in a conspicuous place the office hours that he or she will maintain. Office hours are those hours in which a licensed optometrist is actually present on the premises; however, this section does not prevent the office from being open for the purpose of accepting appointments or payments or performing other duties that by law do not require the presence of a licensed optometrist. Advertisements or any other public announcement of office hours must specify those hours in which a licensed optometrist is present on the premises.

 (B) Mobile units may be used; however, the optometrist shall obtain a registration for the mobile unit from the board. A mobile unit must be limited to visiting and providing services to licensed health care facilities within this State.

 (C) Notwithstanding the provisions of subsection (A), the board may promulgate regulations regarding optometrists' offices so as to provide for:

 (1) adequate and appropriate office facilities for the practice of optometry;

 (2) the proper handling of patient records; and

 (3) appropriate sanitation for office facilities.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑325.** Multiple offices; display of license.

 Nothing in this chapter may be construed to limit the number or to prescribe or restrict the location of offices an individual optometrist or group of optometrists may operate. Every optometrist must display a separate certificate of licensure certified by the board in each location in which the optometrist practices. Duplicate certificates of licensure may be obtained from the board by filing an application on a form prescribed by the board and paying the prescribed fees.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑330.** Use of optometrist's services authorized for agency and school‑required examinations.

 (A) Whenever it is required by law that a visual test of the eye must be made or optometric care of the eye is required of a person by a school or college or a state or county agency, the test or care may be given by an optometrist licensed in this State. When a person is required to furnish evidence of visual efficiency, a report of a licensed optometrist is sufficient evidence to comply with the requirement.

 (B) All agencies of the State and its subdivisions and all commissions, clinics, and boards administering relief, public assistance, public welfare assistance, social security, or health services under the laws of this State shall accept the services of licensed optometrists for all services that they are licensed to perform relating to a person receiving benefits from such an agency or subdivision of the State. These agencies, or agents, officials, or employees of these agencies, including the public schools, may counsel with and advise the persons needing eye care as to the type of service needed and as to those qualified to render the service; however, no attempt may be made to guide an individual seeking vision or eye care to either an optometrist or a physician licensed under Chapter 47, Title 40, Physicians, Surgeons, and Osteopaths. The patient must be given free choice in selecting a specialist to serve the patient's vision or eye‑care needs in examinations, vision screening, or other vision‑related services. However, an exception must be made in emergency cases of obvious eye injury or disease where delay in obtaining the services of a physician licensed under Chapter 47, Title 40, Physicians, Surgeons, and Osteopaths, might endanger the patient's visual health. Additionally, in recognized instances of disease or anomalies disclosed in the original physical evaluation by an agency, these cases may be referred directly to specialists, ophthalmologists, or optometrists as considered appropriate by the evaluating agency.

 (C) There may be no differential in the fee schedule for payment of vision or eye‑care services, whether performed by an optometrist or a physician licensed under Chapter 47, Title 40, Physicians, Surgeons, and Osteopaths, that is, for like services common to both professions.

 (D) No funds appropriated for vision or eye care may be used by an agency that practices discrimination between a licensed optometrist or a physician licensed under Chapter 47, Title 40, Physicians, Surgeons, and Osteopaths.

 (E) Nothing in this section may prevent a nurse, school teacher, or welfare worker, employed in public service, from ascertaining the probable need of visual services, if the person does not attempt to diagnose, prescribe, or recommend a particular practitioner or system of practice.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑350.** Exceptions from application of chapter.

 (A) This chapter does not apply to:

 (1) a bona fide student of optometry, medicine, or osteopathy in the clinic rooms or an approved program of an accredited school of optometry, medicine, or osteopathy;

 (2) a commissioned officer in the armed services who is engaged in the practice of optometry in this State insofar as the practice is in the performance of the officer's military duties; or

 (3) an individual licensed in another jurisdiction who is in this State to make a clinical demonstration before a professional society or association, convention, school or college, or agency of the government.

 (B) Nothing in this chapter may be construed to apply to:

 (1) a physician licensed under Chapter 47, Title 40, Physicians, Surgeons, and Osteopaths, in the due course of professional practice; or

 (2) persons who sell as merchandise from an established place of business, ready‑made eyeglasses or spectacles if the person does not aid the purchaser in the fitting of the eyeglasses or spectacles; or

 (3) persons representing supply companies in the act of selling supplies or equipment to licensed eye‑care providers.

 (C) Nothing in this chapter precludes a licensed optician from practicing opticianry as defined by the laws of this State.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑360.** Price of eyeglasses.

 Nothing contained in this chapter or any other provision of law may be construed to restrict or set the price that may be charged for eyeglasses.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑370.** Maintenance of laboratory.

 Nothing in this chapter or any other provision of law may be construed to prevent an optometrist licensed under this chapter from maintaining and operating a laboratory required for private professional practice.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑390.** Unlawful advertising practices.

 (A) It is unlawful for a person, partnership, or corporation that provides optometric services to disseminate, directly or indirectly, or cause to be disseminated any untruthful, deceptive advertisement or representation concerning eye examinations, ophthalmic goods, ophthalmic services, or the practice of optometry. It is also unlawful for a person, partnership, or corporation to disseminate, directly or indirectly, or cause to be disseminated any untruthful, impossible, improbable, misleading, or deceptive advertisement or representation concerning the terms, guarantee, or warranty that relates to the procurement of ophthalmic goods or services.

 (B) It is unlawful for a person, partnership, or corporation that provides optometric services to offer or give eye examinations as a premium or bonus with the purchase of merchandise or in any other manner to induce trade without offering the following information:

 (1) if the offered examination fee is represented as being a reduced price, sale price, or discounted price, the offer must disclose whether the reduced price, sale price, or discounted price is from the offeror's regular selling price or must disclose any other price and its source if it serves as the standard from which the offeror represents the offered price as being a reduced price, sale price, or discounted price;

 (2) if ophthalmic materials are offered in conjunction with a reduced examination fee, the offer must include complete price information regarding all ophthalmic materials;

 (3) the date the offer terminates.

 (C) It is unlawful for a person, partnership, or corporation to disseminate price information concerning ophthalmic goods and services without including whether an advertised price for:

 (1) eyeglasses includes single vision or multi‑focal lenses;

 (2) contact lenses refers to hard or soft contact lenses;

 (3) ophthalmic materials includes all dispensing fees;

 (4) ophthalmic materials includes an eye examination;

 (5) eyeglasses includes both frame and lenses; and

 (6) ophthalmic materials carries restrictions on selection.

 (D) Nothing in this chapter prevents a person from making truthful, nondeceptive claims of qualifications and professional affiliations.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑400.** Immunity.

 No member of the board, its committees, special examiners, agents, and employees may be held liable for acts performed in the course of official duties except where actual malice is shown.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑410.** Severability.

 If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 2005 Act No. 135, Section 1.

**SECTION 40‑37‑420.** Existing licensees; transition; time frame for fulfilling licensing requirements of chapter.

 (A) An optometrist licensed for basic practice of optometry as of July 1, 2005, may continue to practice under the conditions provided for in this section, and regulations promulgated under this chapter, as of July 1, 2005, until September 30, 2008. A basic certified optometrist may:

 (1) employ any means, other than the use of drugs, for the measurement of the powers of vision or the adaptation of lenses for the aid of vision;

 (2) in the sale of spectacles, eyeglasses, or lenses, use lenses in the testing of the eye therefor other than lenses actually sold;

 (3) examine the human eye by the employment of any subjective or objective physical means, without the use of drugs, to ascertain the presence of defects or abnormal conditions for the purpose of relieving them by the use of lenses, prisms, or other physical or mechanical means;

 (4) practice orthoptics or prescribe or fit contact lenses;

 (B)(1) An optometrist licensed for diagnostic practice of optometry as of July 1, 2005, may continue to practice under the conditions provided for in this section, and regulations promulgated under this chapter, as of July 1, 2005, until September 30, 2008, if the optometrist has:

 (a) complied with the educational requirements promulgated by the board; and

 (b) passed a pharmaceutical agent examination which must be approved by the board.

 (2) Notwithstanding any other provision of law, a diagnostically certified optometrist may purchase, possess, and administer pharmaceutical agents including pharmaceutical agents for topical application, other than controlled substances as defined in Section 44‑53‑110, for diagnostic purposes in the practice of optometry. For the purposes of this subsection, "pharmaceutical agent" means: anesthetics, mydriatics, cycloplegics, miotics, dyes, and over‑the‑counter drugs. Miotics may be used only pursuant to the following restrictions:

 (a) miotics may not be used for treatment purposes;

 (b) miotics may be used only for emergency purposes involving the buildup of pressure within the eyeball and immediately upon this emergency use, the optometrist shall refer the patient to an ophthalmologist and file with the South Carolina Board of Examiners in Optometry a written report of the incident in the manner prescribed by the board by regulation; and the South Carolina Board of Examiners in Optometry shall ensure that the quality and quantity of miotics possessed by a diagnostically certified optometrist is consistent with the use of miotics only for emergency purposes involving the buildup of pressure within the eyeball.

 (C) After September 30, 2008, no person may practice as an optometrist in this State if the person has not met all requirements of this chapter in effect at that time and as may be amended in the future. A basic and diagnostically licensed optometrist who wishes to be recertified after September 30, 2008, shall conform to the licensing requirements for a therapeutically‑certified optometrist as provided for in regulation.

 (D) A licensee under this chapter must indicate his or her category of licensure following his or her name or signature on all professional documents.

HISTORY: 2005 Act No. 135, Section 1.